



# Securities and Exchange Commission of Pakistan

Adjudication Division  
Adjudication Department-I

*Before*

**Amir M. Khan Afridi – Director/ Head of Department**

**In the matter of Show Cause Notice issued to The Searle Company Limited**

Dates of Hearings

May 27, 2021, July 27, 2021, August 4, 2021  
and August 9, 2021

### **Order-Redacted Version**

Order dated September 27, 2021 was passed by Head of Department (Adjudication-I) in the matter of The Searle Company Limited. Relevant details are given as hereunder:

<b>Nature</b>	<b>Details</b>
1. Date of Action	Show cause notice dated April 29, 2021
2. Name of Company	The Searle Company Limited
3. Name of Individual*	The proceedings were initiated against the Company and its directors
4. Nature of Offence	<p>Proceedings were initiated in terms of the Section 199 of the Companies Act, 2017 and Section 479 thereof.</p> <p>The brief facts of SCN are that review of the annual audited financial statements of the Company for the year ended June 30, 2020 (Accounts 2020) transpired that the Company had given short term interest free loan and advance to its wholly owned subsidiaries, namely IBL Identity (Private) Limited (IBL) and Searle Biosciences (private) limited (SBL), respectively, as disclosed in note 15, 15.4 and 15.5 to the aforesaid Accounts 2020.</p> <p>The relevant notes to the Account 2020 are given as below:</p> <p><i>“15.4 This represents <u>advance</u> to Searle Biosciences (private) Limited – Wholly owned subsidiary amounting to Rs. 972.18 million (2019: Rs. 975.6 million). These advances are provided for the purpose of financial assistance and are settled in the ordinary course of business. The maximum aggregate amounts outstanding at any time during the year was Rs. 975.58</i></p>



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	<p><i>million (2019: Rs. 975.58 million).</i></p> <p><i>15.5 This represents <u>interest-free loan</u> provided to IBL Identity (Private) Limited – wholly owned subsidiary. The maximum aggregate amount outstanding at any time during the year was Rs. 3.18 billion (2019: Rs. 3.45 billion)."</i></p> <p>In view of the fact the reply of the Company was not found satisfactory, as the Company did not furnish evidence of compliance in terms of Section 199(2) of the Act and the Regulations. The Company extended interest free loans to IBL and financial assistance to SBL in the form of advance, without agreements in writing, and without return, prima facie, in violation of Section 199(2) of the Act. Hence, proceedings were initiated against the Respondents through aforesaid SCN to show cause in writing within fourteen days as to why penalty may not be imposed for contravening the requirements of the Act.</p>
5. Action Taken	<p>Key findings were reported in the following manner:</p> <p>I have examined the submissions made in writing and during the hearing as well as issues highlighted in the SCN. In this connection, it is stated that:</p> <p>(i) Section 199(1) of the Act clearly stipulates that the company cannot make investment in associated company or associated undertaking except under the authority of special resolution, which shall indicate the nature and the amount of the investment and the terms and conditions thereof. Hence, authority of special resolution of shareholders of a company is mandated by law for making any such investments, loans, advances etc., to associated companies or undertakings. The explanation added to Section 199(1) provides that the term "investment" shall include equity, loans, advances, guarantees, by whatever name called, except for the amount due as normal trade credit, where the terms and conditions of trade transaction(s) carried out on arms-length and in accordance with the trade policy of the company.</p>



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The exemption provided by the Commission vide SRO 1239(I)/2017 dated December 6, 2017 is to the extent of a special resolution, wherein the Commission specified the classes of companies to which the restriction provided under sub-section (1) of Section 199 of the Act shall not apply. It has specifically been provided by clause (a) of sub-section (3) of Section 199 of the Act that, "the Commission may by notification in the official Gazette, specify the class of companies or undertakings to which the restriction provided in sub-section(1) shall not apply."

Section 199(2) of the Act provides that the company shall only invest in its associated company or associated undertaking by way of loans or advance in accordance with an agreement in writing and such agreement shall include the terms and conditions, specifying: (i) the nature, purpose and period of loan, (ii) rate of return on loan; (iii) fees or commission; (iv) repayment schedule for principal amount and return; (v) penalty clause in case of default or late repayments; and (vi) security, if any, for the loan in accordance with the approval of the members in the general meeting. Furthermore, the return on such investment shall not be less than the borrowing cost of the investing company or the rate as may be specified by the Commission whichever is higher and shall be recovered on regular basis in accordance with the terms of the agreement, failing which the Company/directors shall be personally liable to make the payment.

- (ii) As per available information, the Company has extended an amount of advance of Rs. 972.18 million (2019: 975.6 million) and interest free loan of the amount of Rs. 3.18 billion (2019: Rs. 3.45 billion) to IBL and SBL respectively. The aforesaid transpires that an amount of Rs. 4.426 billion was extended to wholly owned subsidiary companies without charging any interest thereof and without any agreement in writing. I am of the view that the Company cannot extend 'loan' or



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	<p>'advance' to its wholly owned subsidiary companies without any return thereon. In view of the aforesaid, the Respondents have contravened the requirements of Section 199(2) of the Act.</p> <p>(iii) The Respondents are of the view that all members of the holding company have a beneficial interest in the wholly owned subsidiary company, and hence, no section or group of members in a holding company can benefit at the expense of other members because it will have same impact on all the members of the holding company. I am of the view that holding company and subsidiary companies are separate legal entities. The Respondents have highlighted that the principal of set off of transactions of holding company and subsidiary company exists, and resultantly no loss to any shareholder incurs. I am of the view that mutually exclusive nature of holding and subsidiary companies makes it liable that interest or mark-up be charged and recovered as per legal requirements i.e. Section 199 of the Act read with the Regulations. The Respondents, however, failed to comply with the given requirements as highlighted through SCN in true letter and spirit and extended material amounts of loans and advances to subsidiary companies, without charging any return on the loan amount.</p> <p>(iv) In terms of Regulations 5(4) of the Regulations, the rate of return on loans, advances may not be less than Karachi Inter Bank Offered Rate for the relevant period or the borrowing cost of the investing company, whichever is higher, and rate of return or interest or mark-up at rate to be determined, as specified, on such amounts from the date of transfer of funds was not charged. The aforesaid regulation and the requirements provided in terms of Section 199(2) of the Act make it obligatory on the part of the Respondents to charge and recover mark-up periodically.</p> <p>(v) The Respondents have not placed before me any documentary evidence of any compliance of the</p>
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	<p>requirements of Section 199(2) of the Act and regulation 5(4) of the Regulations.</p> <p>From the above discussion and after careful consideration of all the facts of the case, I am of the view that provisions of Section 199(2) of the Act have been contravened and for this contravention, the Respondents are liable under sub-section (6) of the Section 199 and Section 479 of the Act. In exercise of the powers conferred under the said provision, I hereby impose aggregate penalty of <b>Rs. 4,500,000/- (Rupees four million and five hundred thousand only)</b> on the Respondents.</p> <p>The aforesaid fines must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the Securities and Exchange Commission of Pakistan within thirty days of the date of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the said penalty, proceedings under Section 485 of the Act will be initiated for recovery of the same as arrears of land revenue. It may also be noted that the said fines are imposed on Respondents in their personal capacity, therefore, they are required to pay the said amount from their personal resources.</p> <p>Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties in respect of any default, omission or violation of the Act.</p>
6. Penalty Imposed	<b>Rs. 4,500,000/- (Rupees four million and five hundred thousand only)</b>
7. Current Status of Order	Appeal was filed.